



**NEW YORK CITY
BOARD OF CORRECTION**

January 8, 2019 PUBLIC MEETING MINUTES

MEMBERS PRESENT

Stanley Richards, Acting Vice-Chair
Robert L. Cohen, M.D.
Hon. Bryanne Hamill
Michael J. Regan
Steven M. Safyer, M.D.
Jacqueline Sherman, Esq.

Martha W. King, Executive Director

MEMBERS ABSENT

Derrick D. Cephas, Esq., Chair
Jennifer Jones Austin, Esq.
James Perrino

DEPARTMENT OF CORRECTION ("DEPARTMENT" or "DOC")

Hazel Jennings, Chief of Department
Heidi Grossman, Deputy Commissioner for Legal Matters/General Counsel
Brenda Cooke, Chief of Staff
Peter Thorne, Deputy Commissioner
Timothy Farrell, Senior Deputy Commissioner
Dana Wax, Senior Policy Advisor
Lawton Bourne, Assistant Commissioner
Becky Scott, Acting Bureau Chief
Kwame Patterson, Assistant Commissioner
Marcia Maxwell, Executive Director of Intergovernmental Affairs
William Barnes, Acting Assistant Chief
Ada Pressley, Warden
Willy Rodriguez, Correction Officer
Nancy Li, Policy Analyst
Latima Johnson, Press Officer
Elizabeth Seibold, Press Officer

NYC HEALTH + HOSPITALS ("H+H")-CORRECTIONAL HEALTH SERVICES ("CHS")

Ross MacDonald, M.D., Chief Medical Officer, Assistant Vice President
Patsy Yang, DrPH, Senior Vice President
Carlos Castellanos, Director of Operations
George Axelrod, Senior Director
Zachary Rosner, Associate Executive Director
Ashley Smith, Assistant Director of Policy & Planning
Veronica Lewin, Associate Director
Jonathan Wang, Esq., Senior Director of Risk Mitigation and Management

Michele Martelle, Senior Director of Health Information and Insurance
Priscilla Wong, City Research Scientist I
Peggy Sue Batterton, City Research Scientist I
Monica Katyal, City Research Scientist I
Kelsey Burke, City Research Scientist II
Janet Wiersema, City Research Scientist II
Lisa Caldes, Trainee
Neil B.

OTHERS IN ATTENDANCE

Jennifer Parish, Urban Justice Center (UJC)
Flor Gonzalez, UJC
Alex Abell, UJC
Kelly Grace Price, Jails Action Coalition (JAC)
Victoria Phillips, JAC
Elizabeth Meyers, JAC
Kayla Simpson, Legal Aid Society - Prisoners' Rights Project (LAS)
Daniele Gerald, Children's Rights
Julia Davis, Children's Rights
Elissa Hyne, Children's Rights
Jin Lee, New York City Council (NYC Council)
Taylor Jones, NYC Council
Alana Sivin, NYC Council
Kieshone, NYC Council
Ashley Iodice, Esq., NYC Law Department
Chelsea Davis, NYC Office of the Mayor
Elias Husamudeen, Correction Officers' Benevolent Association (COBA)
Al Craig, COBA
Steven Isaac, COBA
Amelia Warner, COBA
Paulette Bernard, COBA
Kelsey De Avila, Brooklyn Defender Services (BDS)
Simone Spirig, BDS
Brittany Cooper, BDS
Wendell Walters, The Osborne Association
Tim Roche, Administration for Children's Services (ACS)
Stephanie Cendell, ACS
Jennifer Romelien, ACS
Nikisha Ferguson, ACS
Nicholas Aguilar, ACS
Susan Campos, ACS
Marsha Wright, ACS
Joan T., ACS
Nora, ACS
Peggy Herrera, Just Leadership USA
Sarita Daftary, Just Leadership USA
Marco Barrios, Just Leadership USA
Julie Peterson, The Pinkerton Foundation
Christine Pahigian, Friends of Island Academy
Sibella Matthews, University of Chicago Crime Lab

Opening Remarks

Acting Vice-Chair Richards announced that he would be chairing today's meeting because Chair Cephas is unable to attend due to an unforeseeable conflict.

BOC's Executive Director, Martha W. King ("ED King"), provided the following updates to the agenda:

- The Board will vote for a new Vice-Chair at the February 12, 2019 Board Meeting ("February Meeting").
- The Board will move discussion of sexual assault and sexual harassment investigations to the February Meeting. In September 2018, the Board released the results of an audit of DOC investigations that identified significant violations of multiple provisions of the Minimum Standards on Sexual Abuse and Sexual Harassment ("PREA Standards"). At the October 9, 2018 Meeting, the Board unanimously passed a resolution requiring corrective action. Thereafter, the Department failed to adhere to the resolution's required deadlines, including submitting a Corrective Action Plan; instead, DOC Commissioner Brann outlined DOC's recent efforts to improve compliance in a letter to the Board, dated December 10, 2018. By letter dated January 3, 2019, Chair Cephas responded by reiterating that DOC must prepare a Corrective Action Plan that clearly articulates goals and the timelines for achieving them. The Board will hold a special public hearing in April 2019 exclusively focused on DOC's compliance with the PREA Standards.
- The Board will move substantive discussion of DOC's young adult plan to the February Meeting to allow for Chair Cephas' participation. Accordingly, the Board will consider today only a five-week variance permitting DOC to continue comingling a portion of young adults with adults.

Approval of November 13, 2018 Minutes

Acting Vice-Chair Richards asked for a motion to approve the November 13, 2018 meeting minutes. Upon Member Regan moving the item and Judge Hamill seconding it, the minutes were unanimously approved (Acting Vice-Chair Richards, and Members Cohen, Hamill, Regan, Safyer, and Sherman).

Public Comment on Variances

Acting Vice-Chair Richards announced that the Board has nine (9) variance requests scheduled for today, all of which have been previously approved by the Board. This includes six (6) DOC variances: (i) four (4) variances related to the operation of the Horizon adolescent facility; (ii) one (1) variance on punitive segregation seven-day waivers; and (iii) one (1) variance on the comingling of young adults with adults; and three (3) CHS variances.

Public comment on the variance requests was heard from Daniele Gerard (Children's Rights), Victoria Phillips (JAC), Al Craig (COBA), and Jennifer Parish (UJC). The public comments are available at: https://www.youtube.com/watch?time_continue=1&v=rj3kvw_hbzM.

Raise-the-Age Variance Requests

1. Single Occupancy Dry Cells

► Introduction

ED King invited DOC and ACS to provide an update on Raise-the-Age ("RTA") implementation and to present the RTA variance requests.

► DOC Presentation

Acting Assistant Chief William Barnes (“Chief Barnes”) requested renewal of the six-month variance from Minimum Standard § 1-4(b)(2) (single-occupancy wet cells).

► Board Discussion

Acting Vice-Chair Richards explained that this variance provides for the use of dry cells — cells without a toilet or a sink. Judge Hamill noted that during the public comment period, several people discussed issues posed by this variance, including the right to ready access to a toilet under the Human Rights Law. She asked DOC what its plan is to mitigate harm caused by this variance.

Chief Barnes explained that dry cells are necessitated by the physical structure of Horizon, and said that national best practices for juvenile incarceration suggest that residents have more privacy in a dry cell. He added that DOC encourages the youth to personalize their rooms with book shelves and by decorating the walls. Additionally, DOC has a system where youth can push a button during lock-in hours to activate a red light outside of each person’s cell, which signals to staff that the youth needs access to the restroom or water. Member Regan asked how long youth typically wait after activating the red light. DOC’s General Counsel, Heidi Grossman (“GC Grossman”), replied that the goal is to escort youth out of their cells within five (5) minutes, absent extenuating circumstances (e.g., the bathroom is occupied or unavailable).

Member Sherman asked DOC to describe its internal audit process, its findings, how often DOC meets the five-minute goal, and what steps it takes upon discovery that this goal is not being met. Chief Barnes responded that on January 4, 2019, the Department performed an audit using its Genetec video surveillance system, and will continue to perform the audit on a weekly basis. The audit is being used as a means of holding staff accountable when they fail to respond to the red light within five minutes. He said the audit has revealed that officers are not completing bathroom logbook entries and, therefore, DOC has increased its training in this area.

Dr. Cohen stated that dry cells are a form of punitive management and asked if youth could take water pitchers to their rooms at night. DOC Warden Ada Pressley (“Warden Pressley”) said that while pitchers are not allowed in rooms, water fountains are in the housing area and youth are allowed to take paper cups back to their rooms. Tim Roche, Associate Commissioner and Chief Implementation Officer for RTA at ACS (“AC Roche”), said that ACS works closely with DOC and other partners to create a home-like environment different from other correctional facilities. He explained that dry cells are an attempt to create a less-prison like environment “characterized by a toilet inches from your bed.” Acting Vice-Chair Richards said the Board would like to see the Department work towards a more comfortable environment for youth by providing things such as a pitcher of water during lock-in time, as suggested by Dr. Cohen.

ED King read out loud the five (5) proposed variance conditions after which GC Grossman said that the Department accepts the conditions.

► Board Vote

After Acting Vice-Chair Richards called a roll call vote, the Board unanimously approved the variance conditions, 6-0 (Acting Vice-Chair Richards, and Members Cohen, Hamill, Regan, Safyer, and Sherman).

Acting Vice-Chair Richards called for a motion to vote on the six-month variance with the conditions. After the item was moved and seconded, the Board unanimously approved the

variance with conditions, 6-0 (Acting Vice-Chair Richards, and Members Cohen, Hamill, Regan, Safyer, and Sherman).¹

2. Law Library Services

► DOC Presentation

GC Grossman requested renewal of the six-month variance from Minimum Standard § 1-08(f) (access to courts and legal services) requiring physical law libraries in DOC facilities.

► ACS Presentation

AC Roche presented the variance request as follows:

On July 10, 2018, BOC granted a limited six-month variance to allow DOC to house pre-RTA youth² in a facility that does not have a properly equipped and staffed law library. Horizon residents have had access to a law library coordinator (“Coordinator”) since October 1, 2018, and access to tablets capable of accessing LexisNexis since October 23, 2018. Flyers are posted in all halls to ensure that youth are aware of both the Coordinator’s schedule and tablet availability.

The Coordinator makes herself available to youth in the cafeteria each day for two hours during the lunch period, at which time any youth can approach her without an appointment. On weekdays from 3PM–5PM, youth can also schedule appointments with her in their units or request the use of a tablet. Tablets are also available during the weekend, at which time Case Managers can bring the tablets to designated areas equipped with Wi-Fi access. ACS has instituted a daily process for the Coordinator to inspect the tablets and access points she plans to offer residents that day, document the results of these inspections, and facilitate timely plans for the repair of any inoperable systems. LexisNexis is installed on ten (10) ACS tablets and on 50 American Prison Data Systems tablets should the ACS tablets or Wi-Fi access points become inoperable.

Based on audits in October and November, there were 217 meetings between youth and the Coordinator during that period, and 59 instances where youth accessed LexisNexis through the tablets. The audits identified a documentation issue regarding the Coordinator’s tracking her time at Horizon; however, ACS has independently verified through agency time records that she was in fact at Horizon and available to youth at least 20 hours each week in October and November. ACS has addressed the documentation issue with the Coordinator and expects future audits to more accurately reflect her time.

► Board Discussion

Dr. Cohen said he and Member Sherman met the Coordinator at Horizon yesterday, and were very impressed with her weekday process and her engagement with youth. Member Sherman expressed concern that there is an absence of resources available to youth on weekends and hours when the Coordinator is not present. AC Roche responded that youth are preoccupied during the weekends by other activities, and do not try to access LexisNexis tablets during the off hours because they prefer to connect directly with the Coordinator on weekdays. Additionally, tablets are available through the Case Managers on weekends, and the Coordinator has trained the Case Managers on how to access LexisNexis.

ED King read the five (5) variance conditions out loud after which GC Grossman said the Department accepts the conditions.

¹ The final record of variance is available here:

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/Jan-2019/2019.01%20Record%20of%20Variance%20Action%20-%20RTA%20Dry%20Cells%20FINAL.pdf>

² “Pre-RTA youth” refers to 16- and 17-year-old youth previously housed at Rikers Island and 17-year-olds arrested and detained since October 1, 2018.

► **Board Vote**

After Acting Vice-Chair Richards called a roll call vote, the Board unanimously approved the five variance conditions, 6-0 (Acting Vice-Chair Richards, and Members Cohen, Hamill, Regan, Safyer, and Sherman).

Acting Vice-Chair Richards called for a motion to vote on the six-month variance with the conditions. After the item was moved and seconded, the Board unanimously approved the variance with the conditions, 6-0 (Acting Vice-Chair Richards, and Members Cohen, Hamill, Regan, Safyer, and Sherman).³

3. Correspondence

► **DOC Presentation**

GC Grossman requested renewal of the six-month variance from Minimum Standard § 1-11(a) (correspondence) to allow the limitation of mail correspondence based upon a juvenile-centered approach.

► **ACS Presentation**

AC Roche reported that on July 10, 2018, the Board granted a six-month limited variance allowing ACS to identify individuals with whom mail correspondence is permissible, and to limit correspondence only to those individuals based on the safety or security of the youth in custody and/or consistent with court orders. ACS has identified a list of individuals from whom mail correspondence is prohibited or restricted based on the safety and security of the youth. This practice is consistent with ACS' juvenile justice detention model pursuant to which there is no restriction on the amount of correspondence received or the language used therein; and correspondence is opened in front of youth to inspect it for inappropriate content, such as paperclips, staples, and pornography.

► **Board Discussion**

In response to Dr. Cohen's inquiry, AC Roche said he was aware of only one youth on a restricted communication list, which was mandated by a court order of protection. He explained that during the first 72 hours after youth enter custody, residents work with a Case Manager to identify people that should be prohibited from corresponding with them. ACS also reaches out to the youth's family to identify who should be restricted. If objections arise, ACS invites the youth to discuss the restriction with a Case Manager or the Ombudsperson to determine whether it is justified. Acting Vice-Chair Richards asked whether this constitutes the official appeal process and if so, whether youth are made aware of it when they enter custody; AC Roche said it was not part of any existing protocol, but could be developed into an official process.

Dr. Cohen requested that ACS send a notification to the Board when it rejects a youth's request for communication with a restricted individual. AC Roche said this would have to be discussed with the ACS legal team, as it appears to be a confidentiality issue. ED King noted that the Board has been informed of this confidentiality issue and needs more time to look into any applicable State laws.

ED King read out loud one (1) new proposed condition to the variance regarding installation of mailboxes.⁴ GC Grossman said this was the first time DOC was learning about this proposed

³ The final record of variance is available here:

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/Jan-2019/2019.01%20Record%20of%20Variance%20Action%20-%20RTA%20Law%20Library%20FINAL.pdf>

⁴ The proposed condition states: "By February 12, 2019, the Department shall install outgoing mailboxes in common areas (e.g. hallways, cafeterias, etc.) so that all halls have daily access to an outgoing mailbox. The Department shall check each mailbox each business day."

condition, and requested that the Board vote on the variance without the condition and then work with DOC over the next several weeks to implement it. At Acting Vice-Chair Richard's behest, Warden Pressley described the current outgoing mail process at Horizon: residents hand their mail to Case Managers, who give the mail to a Supervisor, who then takes it down to the mail office. Dr. Cohen said there are existing mailboxes throughout the facility. GC Grossman said DOC can add mailboxes in accordance with the condition but it is not DOC's role to check the mail, as that task lies with ACS Case Managers. The Board suggested revising the condition's language regarding who should check mailboxes from "the Department" to "staff." GC Grossman accepted the condition as revised.

► Board Vote

After Acting Vice-Chair Richards called a roll call vote, the Board unanimously approved the variance condition, 6-0 (Acting Vice-Chair Richards, and Members Cohen, Hamill, Regan, Safyer, and Sherman).

Acting Vice-Chair Richards called for a motion to vote on the six-month variance with the condition. After the item was moved and seconded, the Board unanimously approved the variance with the condition, 6-0 (Acting Vice-Chair Richards, and Members Cohen, Hamill, Regan, Safyer, and Sherman).⁵

4. Nursery Program

► DOC Presentation

GC Grossman requested a six-month variance from Minimum Standard § 3-06(e)(5), which requires a physical nursery and child care program for youth who may give birth while in custody. The current variance addresses the fact that compliance with this Minimum Standard is not feasible based upon the structural and spacing limitations of the Horizon facility.

► ACS Presentation

AC Roche noted that on July 10, 2018, the Board granted a six-month limited variance allowing DOC to house pre-RTA youth in a facility that does not have necessary childcare and a nursery program for youth who give birth while in custody. DOC submitted the nursery plan at the October Board Meeting. ACS and DOC are in the process of procuring services for pregnant and parenting youth in the juvenile justice system, pursuing a wraparound model of support intended to follow the youth once they are released to the community. ACS anticipates that the procurement will be finalized in February 2019 and will include nurse-family partnerships, parent coaching, a fatherhood program, and teen choice sexuality education and consultation. In the meantime, if there is a pregnant or parenting youth at Horizon, ACS' Division of Youth and Family Justice is able to access these wraparound services through ACS' Child Welfare contracts. AC Roche reported that based on ACS and DOC data and Horizon's first three months of operation, it is extremely unlikely that a pregnant 16- or 17-year-old will remain detained through delivery. To date, there has been only one pregnant pre-RTA youth admitted to Horizon and she was discharged well before her due date and referred to a nurse-family partnership.

► Board Discussion

In response to concerns raised by Judge Hamill about what would happen if a youth were to deliver while in Horizon custody, AC Roche emphasized that ACS does not want to keep infants at Horizon. ACS will instead work hard to connect youth to wraparound community-based

⁵ The final record of variance is available here:

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/Jan-2019/2019.01%20Record%20of%20Variance%20Action%20-%20RTA%20Correspondence%20FINAL-update.pdf>

supportive services and mother-child residential programs outside of the juvenile correction setting. Acting Vice-Chair Richards asked whether ACS has a written plan in place to this effect, to which AC Roche replied that medical staff ensure pregnant youth receive proper prenatal care. In the rare event a youth remains in custody beyond delivery and retains custody of her child, ACS would work closely with contracted providers to create an individualized plan for the mother and child. Having witnessed problems with nursery access on Rikers Island, Dr. Cohen urged ACS to develop a more concrete plan for pregnant and post-delivery youth, including developing an agency position on whether the infant could remain with the mother. He also stated that the likelihood of youth being pregnant is quite high — out of only four females who have been housed at Horizon, one was pregnant.

ED King read out loud two (2) existing conditions after which GC Grossman said that DOC accepts the conditions.

► **Board Vote**

After Acting Vice-Chair Richards called a roll call vote, the Board unanimously approved the two variance conditions, 6-0 (Acting Vice-Chair Richards, and Members Cohen, Hamill, Regan, Safyer, and Sherman).

Acting Vice-Chair Richards called for a motion to vote on the six-month variance with the conditions. After the item was moved and seconded, the Board unanimously approved the variance with the conditions, 6-0 (Acting Vice-Chair Richards, and Members Cohen, Hamill, Regan, Safyer, and Sherman).⁶

► **Additional Board Discussion re: RTA**

Dr. Cohen said the Board's Monitoring staff have produced reports showing that violence at Horizon is decreasing and the overall trends within the facility are positive. However, he is concerned about Horizon's lack of an outdoor recreation yard. AC Roche responded that the youth currently have access to a large gymnasium, but the outdoor recreation area is under construction. ACS plans to have a basketball court and a large grass area operational in March 2019. Judge Hamill asked how often youth have access to fresh air outside of the facility. AC Roche responded that each of the housing units has an open-air patio, and when the outdoor recreation area is available, youth will be scheduled to go outside two to three times per week.

Young Adult Housing and Comingling Variance Request

► **Introduction**

ED King stated that the Board's Minimum Standards require the Department to house 18-21 year-olds separately and apart, and to provide age-appropriate programming. However, DOC has sought and the Board has repeatedly granted a variance from this requirement. In October 2018, the Board granted a three-month variance to assess the Department's progress toward housing substantially all young adults in young adult housing. ED King reiterated that the Board will consider a five-week variance today due to Chair Cephas' absence, and move substantive discussion on young adult housing and comingling to the February Meeting.

► **DOC Presentation**

Timothy Farrell, DOC's Senior Deputy Commissioner ("DC Farrell"), requested a five-week limited variance from Minimum Standard § 1-02(c)(1), which requires inmates ages 18-21 be housed separate and apart from inmates over 21. The Department is seeking this variance only for 19-21-year-olds.

⁶ The final record of variance is available here:

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/Jan-2019/2019.01%20Record%20of%20Variance%20Action%20-%20RTA%20Nursery%20FINAL.pdf>

► Board Discussion

Dr. Cohen said that RNDC has serious problems and the number of alarms and incidents in December 2018 show that this facility “is not safe.” He suggested that there must be two (2) officers in every RNDC young adult housing area for the safety of staff, civilians, and residents. Additionally, during a recent visit to RNDC with Member Perrino, they observed that three young adult housing areas were “essentially SRG units” (where members of the same gang are housed together). They are concerned that this creates unsafe conditions for staff. Dr. Cohen noted that he saw significant efforts toward constructing new program facilities at RNDC. DC Farrell said the construction is expected to end in February and the programs will be fully implemented by early March 2019.

Acting Vice-Chair Richards asked about staffing ratios in the RNDC housing areas. In response, DC Farrell reported that they vary among the different units (e.g., TRU and SCHU have a more robust officer-to-inmate ratio compared to some general population units). DC Farrell said that he does not know specific staffing ratios, but there is generally an A-Post Officer and two Floor Officers in general population units; he said he could provide more detailed information to the Board at a later time.

Judge Hamill said DOC’s young adult plan received by the Board in October 2018 did not place enough 19-21-year-olds in young adult-only housing. ED King noted that the Board and DOC are articulating the details of a new plan in private discussions. Judge Hamill stressed that to keep reviewing this variance going forward, the Board requires a more comprehensive, written young adult plan.

ED King read out loud one (1) existing condition.

► Board Vote

After Acting Vice-Chair Richards called a roll call vote, the Board unanimously approved the variance condition, 6-0 (Acting Vice-Chair Richards, and Members Cohen, Hamill, Regan, Safyer, and Sherman).

Acting Vice-Chair Richards called for a motion to vote on the five-week variance with the condition. After the item was moved and seconded, the Board unanimously approved the variance with the condition, 6-0 (Acting Vice-Chair Richards, and Members Cohen, Hamill, Regan, Safyer, and Sherman).⁷

Punitive Segregation (“PSEG”) Seven-Day Waiver Variance Request

► Introduction

ED King reported that in September 2015, the Board first granted a variance from Minimum Standard §1-17(d)(2) to allow the Department, in highly exceptional circumstances presenting safety concerns, to waive the requirement that people in custody be immediately released from segregation for seven (7) days after they have been held in punitive segregation for thirty (30) consecutive days.

The Board has renewed this variance multiple times, each time on the condition that the Chief of Department must approve each variance and state why placement in a less restrictive setting is not a safe option. The Board last renewed this variance on July 13, 2018, and it is set to expire on January 13, 2019. DOC requests a six-month renewal of this variance. ED King said the Board’s staff published a report on DOC’s use of this variance and in the last year, the Chief of

⁷ The final record of variance is available here:

https://www1.nyc.gov/assets/boc/downloads/pdf/2019_01_14_record_of_variance_action_ya_co_mingling_final.pdf

Department approved only one (1) waiver in July 2018 and denied zero (1). Since the Board first granted the variance in September 2015, the Department has granted a total of 28 waivers and denied 10.

► **DOC Presentation**

DOC's Chief of Department, Hazel Jennings ("Chief Jennings"), requested a renewal of the six-month variance.

► **Board Discussion**

Dr. Cohen said this variance has only been used once in the past year and seems unnecessary as there are many places on and off Rikers to temporarily place people for the seven-day period. He thanked DOC for using the waivers sparingly. However, he will not vote in favor of this variance because the Board and the Department should support "the notion that prolonged solitary confinement is harmful."

Acting Vice-Chair Richards requested that DOC explain how it has been able to use the waivers more sparingly in the last year and manage the population without prolonged segregation. Chief Jennings said she reviews each waiver submission including the incarcerated person's history and mental health. She also conducts interventions with the person in custody, looks at video footage, and requests that program staff or the incarcerated person's parents intervene. She added that DOC would still like the option to use the seven-day waiver for safety or security concerns, if necessary. Acting Vice-Chair Richards remarked that "there is something systemic happening in addition to the Chief reviewing each case [and] it is creating a space where people that come out of PSEG are not engaging in behavior that would put them back and trigger the behavior." Member Regan also commended the Chief for her careful and comprehensive waiver reviews.

ED King read out loud the existing condition.

► **Board Vote**

After Acting Vice-Chair Richards called a roll call vote, the Board unanimously approved the variance condition, 6-0 (Acting Vice-Chair Richards, and Members Cohen, Hamill, Regan, Safyer, and Sherman).

Acting Vice-Chair Richards called for a motion to vote on the six-month variance with the condition. After the item was moved and seconded, the Board approved the variance with the condition, with five (5) votes in favor (Acting Vice-Chair Richards, and Members Hamill, Regan, Safyer, and Sherman) and one (1) vote in opposition (Member Cohen).⁸

Serious Injury Reports in NYC Jails⁹

ED King announced that yesterday evening, the Board released its report titled *Serious Injury Reports in NYC Jails* ("Report"). She thanked the Board's Monitoring team — in particular, Bart Baily and Diana Sang — for leading this project and upholding the Board's longstanding commitment to public health issues in the jails, and Emily Turner and Bennett Stein for their critical contributions to the Report. ED King noted that the Board created its Report in preparation for today's request for a variance from Minimum Standard § 3-08(c)(3) regarding privacy and confidentiality. Following is a summary of ED King's presentation.

⁸ The final record of variance is available at:

https://www1.nyc.gov/assets/boc/downloads/pdf/2019_01_14_record_of_variance_action_seven_day_waivers_final.pdf

⁹ The Board's *Serious Injury Reports in NYC Jails* (January 2019) is published here:

<https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/2019.01.07%20-%20BOC%20Serious%20Injury%20Report%20-%20Final.pdf>

I. Background

Since 2013, CHS has requested and the Board has granted this variance, which allows CHS to provide the Department with specific diagnoses related to injuries sustained by people while in custody. CHS and DOC report to the Board that this communication is critical to DOC's investigations of injuries and it facilitates the appropriate follow-up care and safety measures on behalf of patients. Such increased communication promotes more effective deployment of resources toward the common goal of increased safety. In granting this variance, the Board also sought to promote stronger collaboration between CHS and DOC in preventing future injuries. Nowhere and at no time is this collaboration more important than in cases of serious injuries — the topic of the Board's Report.

When serious injuries occur in the jails, their consequences are severe and wide-ranging; they affect the short and long-term physical and mental health of individuals who are injured; and they have a compounding negative impact on individuals' employment, education, housing, and their general reintegration into the community. These incidents also place a significant burden on resources and correctional and medical staff because they disrupt operations and require emergency responses, follow-up medical treatment, investigations, and reporting. To prevent serious injuries, it is essential that we understand the rates, types, and circumstances surrounding serious injuries that occur in the City's jails. Additionally, accurate reporting is necessary to maintain public accountability and trust in and engagement with government. The Board believes that implementation of the Report's recommendations will increase prevention of serious injuries to incarcerated people and promote problem-solving and transparency.

► Key Findings

Board staff reviewed DOC injury and incident data from 2008-2018 and CHS injury data from June 2016 to September 2018. Staff also audited Injury-to-Inmate Reports for April, May, and June 2018. Significant findings are:

- Despite a 32% decline in the DOC population, the number of Injury-to-Inmate Reports (serious and non-serious) generated by DOC for people in custody increased 101%, from 15,629 in 2008 to 31,368 in 2017.
- CHS data show the rate of serious injuries declined from an average of 9.73 per 1,000 people in custody in 2016 (Jun.-Dec.) to an average of 7.48 per 1,000 people in custody in 2018 (Jan.-Sept.).
- DOC consistently reports 80% fewer serious injuries than CHS.
- 67% of the 149 serious injuries audited by BOC were never reported as any type of incident by the Department.
- Only 31% of audited injury reports were complete.
- DOC's investigation process for injuries is plagued by delays, poor accountability, and incomplete reviews.
- CHS staff's requirement to document medical dispositions in injury reports is frequently unmet.
- The Anna M. Kross Center (AMKC) had the highest number and rate of serious injuries.
- On average, it took approximately two (2) hours for seriously injured incarcerated people to receive medical attention after a DOC supervisor was notified of the injury.
- Most serious injuries (90%) involved lacerations requiring sutures or fractures.
- Facial trauma was the most common type of injury.
- 53% of injuries were at least partially caused by an "inmate on inmate altercation."
- 80% of serious injuries occurred in housing areas and most events causing serious injuries were not witnessed by staff.

► **Recommendations**

Based on these findings, the Report outlines steps that the Board believes are needed to uphold the purpose of today's variance and to ensure proper injury surveillance and prevention:

- DOC and CHS should immediately begin jointly publishing monthly data on the number, type, cause, and location of injuries to people in custody (serious and non-serious), as these indicators are critical to prevention efforts.
- Within the next three (3) months, DOC should come into compliance with their existing policy for reporting serious injuries. DOC should report all serious injuries to people in custody determined to be serious by clinical staff.
- Within the next nine (9) months, DOC and CHS should establish new protocols and take steps to increase accountability including: an assessment of which supervisory reviews are needed and whether changes to the Injury-to-Inmate Report form are needed; the development of an electronic injury-tracking system; and additional training to ensure that injury reports are complete and include accurate, final diagnoses and dispositions.
- DOC and CHS should immediately begin providing the Board with monthly access to all DOC Injury Reports that CHS designates as associated with a serious injury. This will support DOC's and CHS's efforts to improve their process and increase accountability. BOC has also committed to conducting an annual audit of Injury-to-Inmate Reports.
- Within the next three (3) months, DOC should review the conditions leading to the high number and rate of serious injuries at AMKC and implement a plan to reduce injuries there. DOC should use video review to inform this injury analysis so that the locations and causes of serious injuries are better documented.
- DOC should contract with an independent auditor to assess reporting of serious injuries to staff. BOC believe the concerns raised here about tracking, reporting and preventing injuries to people in custody could also apply to staff injuries. Because DOC does not currently provide injury or medical information about staff to the Board, BOC could not and cannot conduct this proposed audit. The audit's goals would include understanding who is getting injured; how, when, and where injuries are occurring; and what types of injuries are sustained by staff. Ultimately, this audit must inform injury prevention planning and public reporting

► **DOC Response to the Report**

DOC's Senior Policy Advisor, Dana Wax responded to the Report as follows.

(i) Introduction

The Department appreciates the opportunity to address the issues discussed. CHS and DOC capture serious injury data for separate purposes, and DOC officers and staff are not medical professionals. The Department appreciates CHS' partnership in tracking individuals' information, as timely communication from health practitioners is critical to protecting and preserving health and safety across DOC facilities. Information gathered from these reports is often critical to officer investigations and inmate safety. For example, a person in custody had been the target of violence but did not report it; instead, the individual reported to officers that his injury was the result of a fall. However, CHS' injury report made it clear that the injuries could not have been sustained in that manner.

DOC welcomes regular and standardized information sharing and looks forward to working with CHS on this.

(ii) BOC's Finding of Underreporting

DOC has two directives that inform serious injury reporting: Directive # 5000R-A (which outlines DOC's procedures related to serious injuries) and Directive # 5006R-D (which outlines DOC's procedures for serious injuries that relate to use of force ("UOF")). The scope of the definition of

“serious injuries” is narrower in 5006R-D because UOF classification is dictated by the *Nunez* Consent Judgement and it cannot be changed without the consent of all parties and approval from both the *Nunez* Monitor and the federal court. However, DOC will investigate its ability to reconcile definitions within these two directives to eliminate potential confusion. DOC will also work closely with CHS to improve communication and information sharing and ensure that all injuries considered serious by CHS medical professionals are reported.

(iii) BOC’s Finding on Reporting of Hand and Foot Fractures, Lacerations, and Dislocations

Hand and feet fractures account for less than 10% of total annual fractures recorded in DOC’s systems in 2017. The frequently fractured areas of nose, eye, and jaw comprise nearly half of the total fractures recorded for people in custody. The Department acknowledges that hand and foot fractures as well as suture repair and trauma may be underreported. DOC believes this can be corrected in part by revisions to the directives, and the Department will take steps to evaluate and improve reporting in these areas. Additionally, DOC’s directive does not classify “dislocation” as a serious injury. For dislocations or any other injury not listed in DOC’s directive to be considered “serious,” CHS would need to indicate this on the form. The Department will work with CHS to revise this form and all serious injury indicators to better capture these injuries.

(iv) BOC’s Finding of Delays and Incomplete Reviews

The Department acknowledges there is room for improvement in this area and will improve procedures and oversight to ensure better compliance. DOC will also create a centralized electronic tracking system to improve the rate of completion and rates of reviews. DOC and CHS will work together to improve all communication pathways around the Injury-to-Inmate form. The Department is prepared to accept and enact the Board’s recommendations with the exception of the recommendation to engage an independent auditor, which it believe falls outside of the scope of the Board’s Report.

► CHS Response to the Report

Dr. Ross MacDonald, Chief Medical Officer and Assistant Vice President of CHS, stated that CHS generally agrees with the Department’s response to the Board’s Report. He reiterated that serious injuries were being tracked by CHS and DOC using different methodologies and different definitions, consistent with the agencies’ individual missions. CHS was approaching serious injuries from a health perspective, using its electronic health record instead of the Injury-to-Inmate reports. Dr. MacDonald said CHS looks forward to developing a process to better reconcile this issue.

► Board Discussion

Acting Vice-Chair Richards asked how DOC and CHS plan to reconcile the issues laid out in the Board’s report and start reporting consistent information. Becky Scott, DOC’s Acting Bureau Chief (“Chief Scott”), said DOC and CHS have not begun discussions in response to the Report. However, DOC recognizes that improving communication and collaboration with CHS is important, and DOC will attempt to identify what it can improve upon, implement, and sustain.

Dr. Cohen and Judge Hamill thanked the Board’s Monitoring and Research staff for their work on the Report. Dr. Cohen noted that when Christopher Robinson was killed on Rikers Island over ten years ago, there had been many serious injuries (e.g., fractures of jaws, ruptures of eardrums) to young people in RNDC at that time. He explained that “these injuries represented an epidemic reflecting an institution that was not in control.” For this reason, it is critical that serious injury information be of good quality and pass accurately between DOC and CHS. Dr. Cohen also said that staffing on Rikers Island should relate to where these injuries are primarily taking place to prevent future injuries and ensure safety (for example, there should be two officers on the floor at AMKC and RNDC).

Judge Hamill stated that many of the Report's findings relate to management issues, and she and other Board members believe the variance vote should be postponed to next month's meeting so that CHS and DOC can discuss what it intends to do with the Board's recommendations.

CHS Variance Requests

Acting Vice-Chair Richards said that all three (3) CHS variance requests have been renewed by the Board every six months for some years. In 2017, the Board voted unanimously to integrate these variances into the Minimum Standards and it remains committed to doing so.

1. Injury Reports

► CHS Presentation

Dr. MacDonald requested a variance from Minimum Standard § 3-08(c)(3). He said this has been a recurring variance since 2013, allowing CHS to communicate diagnoses to DOC for the limited purpose of completing an injury report.

► Board Discussion

ED King said the Board is not proposing any conditions on this variance until it reconvenes at next month's public Board Meeting. Acting Vice-Chair Richards explained that the Board intends to use the next five weeks to discuss conditions and the Report's findings with DOC and CHS.

► Board Vote

Acting Vice-Chair Richards called for a motion to vote on the five-week variance. After the item was moved and seconded, the Board unanimously approved the variance, 6-0 (Acting Vice-Chair Richards, and Members Cohen, Hamill, Regan, Safyer, and Sherman).¹⁰

2. Tuberculosis ("TB") Testing

► CHS Presentation

Dr. MacDonald requested a variance from Minimum Standard § 3-04(b)(2)(v)(A) to allow CHS to use an interferon gamma release assay to do surveillance for exposure to TB, instead of performing TB skin testing. He said that CHS's TB control program has been extremely successful and that incidents of TB have dramatically declined. CHS has been requesting this variance every six-months since 2011.

► Board Discussion

Member Regan asked how often the residents of Rikers Island are tested for TB. Dr. MacDonald said that QuantiFERON-TB screenings are done on every intake. If a person has been in custody very recently, the variance allows CHS to not repeat the test within six months. Dr. MacDonald added that CHS has the most robust screening system as well as the most access to negative pressure isolation that he is aware of in the nation.

► Board Vote

Acting Vice-Chair Richards called for a motion to vote on the six-month variance. After the item was moved and seconded, the Board unanimously approved the variance, 6-0 (Acting Vice-Chair Richards, and Members Cohen, Hamill, Regan, Safyer, and Sherman).¹¹

¹⁰ The final record of variance is available here:

https://www1.nyc.gov/assets/boc/downloads/pdf/2019_01_14_record_of_variance_action_injury_reports_final.pdf.

¹¹ The final record of variance is available at:

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3. Psychotropic Medication

► CHS Presentation

Dr. MacDonald requested a variance from Minimum Standard § 2-05(b)(2)(i-ii) allowing CHS to evaluate stable adult patients on psychotropic medications in general population at least every 28 days, rather than every 14 days. He said CHS has presented data to the Board demonstrating that it is not using this practice for all patients in general population and that it has a mixture of 14-day renewals and 28-day renewals. CHS believes this practice is safe and allows staff to focus efforts on the sickest patients in the system.

ED King said this variance has been granted by the Board since 2005 and CHS data shows that there are approximately 2,460 individuals in NYC jails (or about 31% of the current population) with psychotropic medication orders, and of those, approximately 1,215 (or 49%) are on a 28-day prescription schedule. Twenty-nine percent (29%) of patients with psychotropic medication orders are in general population and are on a 14-day prescription schedule; the rest are in mental observation units and by policy, are on schedules of 14 days or less.

► Board Discussion

Dr. Cohen said the data prepared by CHS on serious mental illnesses shows that the percentage of the population on psychotropic medication remains steady. He further noted that it is important not to overattribute current problems in the jails to individuals with serious mental illness.

► Board Vote

Acting Vice-Chair Richards called for a motion to vote on the six-month variance. After the item was moved and seconded, the Board unanimously approved the variance, 6-0 (Acting Vice-Chair Richards, and Members Cohen, Hamill, Regan, Safyer, and Sherman).¹²

Public Comment and Adjournment

The Board heard public comment from Kayla Simpson (LAS- PRP), Elias Husamudeen (COBA), Victoria Phillips (JAC), Steven Isaac (COBA), Al Craig (COBA), Peggy Herrera, Just Leadership USA) and Kelly Grace Price (JAC)¹³. The public comments are available at: https://www.youtube.com/watch?v=rj3kvw_hbzM&t=8031s.

Following public comment, Acting Vice-Chair Richards adjourned the meeting.

¹² The final record of variance is available here:

https://www1.nyc.gov/assets/boc/downloads/pdf/2019_01_14_record_of_variance_action_psychotropic_medications_final.pdf

¹³ Testimony from Kelly Grace Price is available here:

https://www1.nyc.gov/assets/boc/downloads/pdf/january_82018_boc_testimony_kpg.pdf